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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,135	11/05/2001	Victor Carnell	CA33-002	5948
7590	05/11/2004		EXAMINER	
Kevin S Lemack Niels & Lemack 176 East Main Street Westboro, MA 01581				GITOMER, RALPH J
		ART UNIT	PAPER NUMBER	1651

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/890,135	CARNELL, VICTOR
	<b>Examiner</b>	<b>Art Unit</b>
	Ralph Gitomer	1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).. Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 05 November 2001.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-6,12-16,18,22 and 23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-6,12-16,18,22 and 23 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_ .

4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_ .

Please inform the examiner as to how this case differs from the parent application 09/239,051 to determine the proper priority date for each claim. Also, please provide all search and examination reports of any related cases including PCT/US00/01952. Priority is granted to 11/5/01 at this time. A complete copy of all pending claims is requested. And the Caudry reference submitted is incomplete.

Although not presently claimed, the point of novelty appears to be compositions that contain both cetyl pyridinium chloride (CPC) and sodium lauroyl sarcosinate (SLS). To employ toothpaste, mouthwash and disinfecting solutions for their known function in combination is not novel. The other claimed toothpaste and mouthwash components are entirely conventional and taught in many of the references cited herein.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 12, 16, 18, 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of each of White, Lee, Goldenberg, and Vermeer in view of each of Meier and Caudry.

White (US 2003/0039617 A1) entitled "Oral Compositions" teaches in paragraph 55, lauroyl sarcosinate. In paragraph 59 cetyl pyridinium chloride is disclosed. In paragraph 113, treating with dentifrice or mouthrinse is shown.

Lee (US 2002/0086039 A1) entitled “New Cosmetic, Personal Care, Cleaning Agent, and Nutritional Supplement Compositions and Methods of Making and Using Same” teaches in paragraph 20, compositions for eliminating or reducing microbes in cosmetic formulations and cleaning agents. In paragraph 78, toothpaste, mouthwash and mouth rinse products are taught. In paragraphs 304-306, toothpaste products with fluoride and sodium lauroyl sarcosinate are shown. In paragraph 312 the function of the compositions are preventing caries or decay. In paragraph 337 cetylpyridinium chloride is shown.

Goldenberg (4,666,708) entitled “Dental Rinse” teaches in column 2, an oral hygiene composition which when used along or in conjunction with tooth brushing, removes plaque when subsequently the teeth are brushed with dentifrice. This reduces caries. In column 4 lines 22-23, sodium lauroyl sarcosinate is shown. In column 6 lines 9-11, pyridinium chloride and lauroyl sarcosine are shown.

Vermeer (5,624,906) entitled “Oral Hygiene Compositions Comprising Heteroatom Containing Alkyl Aldonamide Compounds” teaches in column 25 first paragraph, various alkyl sarcosinates including C12 which is lauryl or lauroyl. In column 36 lines 13-14, cetylpyridinium chloride is shown.

Each of the above cited references teach the combination of lauroyl sarcosinate and CPC are conventional components of oral care products including dentifrice and mouthwash. Broad ranges of these and other conventional components are disclosed.

The claims differ from the above references in that they include the limitation of exposing dental appliances and toothbrush to a composition to disinfect them.

Meier (J of Dental Hygiene) entitled "An In vitro Investigation of the Efficacy of CPC for Use in Toothbrush Decontamination" teaches a toothbrush disinfectant composition containing CPC.

Caudry (J of Infection Control) entitled "Contaminated Toothbrushes and Their Disinfection" teaches disinfecting toothbrushes with Cepacol and other mouthwashes.

It would have been obvious to one of ordinary skill in this art at the time the invention was made to disinfect dental appliances and toothbrush with a known disinfecting solution as taught by each of the secondary references in combination with the method of the primary references because when one employs the method of the primary references, brushing one's teeth with dentifrice, one then cleans the toothbrush in some fashion. This fashion is not stated in the primary references. To substitute this unstated toothbrush cleaning with any known toothbrush cleaning with the expected result would have been obvious. No novelty is seen in any of the claimed amounts or proportions, nor are any advantages or functions ascribed to the amounts or proportions.

To employ known antibacterial agents such as CPC with any known surfactants such as lauroyl sarcosinate for their known functions in known methods is not novel. The present claims are directed to a method of reducing the incidence of caries. This is a known function of toothbrushing and mouthwashing. Cleaning toothbrushes is not novel.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, 12-16, 18, 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in every occurrence.

In claim 1 last line, what the amount is effective for is not stated. In claim 2 "the resulting toothpaste" lacks antecedent basis. Also in claim 2 and elsewhere, "less than about" reads on zero which is indefinite. Please check the term "weight" for typos. In claim 6 "the resulting toothpaste composition" lacks antecedent basis.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Winston (4,721,614) teaches dentifrice with sodium lauroyl sarcosinate.

Vermeer (5,880,076) teaches dentifrices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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